

MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force (Task Force)
FROM: Gerald Mueller
SUBJECT: Summary of the January 12, 2009 Task Force Meeting
DATE: January 19, 2009

Participants

The following people participated in the Task Force meeting:

Task Force Members

Harvey Hackett	Bitterroot
Butch Hiller	Mountain Water Company
Fred Lurie	Blackfoot Challenge
Marc Spratt	Flathead Conservation District/Flathead Chamber of Commerce
Ted Williams	Flathead Lakers
Brianna Randall	Clark Fork Coalition
Holly Franz	PPL Montana

Ex Officio Members

Senator Verdell Jackson	Senate District 5
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Public

Mark Reller	Bonneville Power Administration (BPA)
Prescott Hackett	

State and Federal Agency Personnel

Ann Schwend	Montana Department of Natural Resources and Conservation (DNRC)
Tim Bryggman	DRNC
Mike McLane	Montana Department of Fish, Wildlife and Parks (DFWP)

Staff:

Gerald Mueller	Consensus Associates
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Meeting Agenda

- December 8, 2008 Meeting Summary
- Updates
 - Prior Appropriation paper distribution
 - Joint Appropriation Subcommittee testimony
 - FY 2009 Conference Planning
- Hungry Horse Water Contracting Activity
- 2009 Water Legislation
- Water Supply Infrastructure
- Public Comment
- Next Meeting

December 8, 2008 Meeting Summary

The Task Force made no change to the December 8, 2008 meeting summary.

Updates

Prior Appropriation Paper Distribution - Gerald Mueller reported that he mailed copies of the paper to members of the Joint Appropriation Subcommittee on Natural Resources and Transportation along with the report required by 85-2-350 MCA and to members of the Senate and House Natural Resources Committees. He will deliver copies of the paper to all of the Senate and House members from the Clark Fork River basin. The paper is also posted on the Task Force web page at http://dnrc.mt.gov/wrd/water_mgmt/clarkforkbasin_taskforce/default.asp.

Joint Appropriation Subcommittee Testimony - Mr. Mueller stated that he will present testimony on Tuesday, January 13, 2009 asking that \$37,500 be added to the DNRC budget to fund the Task Force for each year of the coming biennium. His testimony was previously circulated to Task Force members. Mr. Mueller asked that Task Force members support this request in writing or at the Subcommittee hearing. At Senator Jackson's request, Representative Taylor has also introduced House Bill 201 to fund the Task Force if the Subcommittee does not include it in the DNRC budget. Senator Jackson has 10 co-sponsors, 5 from each party.

Question - Has the Task Force considered a long-term funding strategy?

Answer by Gerald Mueller - We have considered other funding sources including the DNRC Watershed Assistance Program, other DNRC grants, and private sector grants. However, because the Task Force is not engaged in "on-the-ground" projects such as stream bank restoration, water quality projects, or facility construction, funding sources other than DNRC's budget have not appeared feasible. We opted for the DNRC budget approach prior to the last legislative session after discussions with the department, and the legislature appropriated funding for the Task Force through DNRC for the current biennium. DNRC sought funding for the Task Force in its budget for 2010-2011, but the Governor's Budget Office removed all funding that had been categorized as "one-time-only" funding in the last biennium.

Answer by Marc Spratt - After funding was approved for the last biennium, we thought that using the DNRC budget for basic Task Force funding was a long-term strategy.

Comment by Senator Jackson - Groups such as the Task Force and the Upper Clark Fork River Basin Steering Committee are a very good deal for the state. Members provide expertise and time at no expense to the state.

FY2009 Conference Planning - Gerald Mueller stated that he will meet with Ann Schwend after presenting testimony to the Joint Appropriation Subcommittee to discuss both the round table and the technical conference focused on the conjunctive management of surface and ground water. Dr. David Shively is beginning work on the contract between the University of Montana Department of Geography and the DNRC for both conferences. He will seek to use the contract for last year's conference as a template for the 2009 conferences.

Comment - After your meeting, you should convene our conference planning committee via conference call. If we are going to invite speakers from out of state, we need to do so this month or next month.

Response by Gerald Mueller - In addition to Ms. Schwend, the planning committee includes Brianna Randall, Marc Spratt, and Dr. Shively. I will convene the committee via conference call after discussing the conferences tomorrow with Ms. Schwend.

Hungry Horse Water Contracting Activity

Tim Bryggman reported on DNRC activities regarding the Hungry Horse contract subsequent to the last Task Force meeting. On December 9, 2008, DNRC personnel, John Tubbs, Ethan Mace, and Mr. Bryggman, met in Helena with Wendy Christensen, Rick Vinton, and Leslie Stillwater of the US Bureau of Reclamation (BOR) to discuss the contracting effort. DNRC sought to revisit the basic assumptions underlying this effort. DNRC sees two possible approaches to the contract. One is to seek Hungry Horse water for additional domestic consumptive use. The other would be to seek water for hydropower. DNRC asked Ms. Christensen and her colleagues what additional information is needed for the cost allocation study beyond what it has provided in Mr. Bryggman's and Mr. Russ Levin's analysis projecting future basin water consumption over the next 50 years. This analysis was included with the September 17, 2007 meeting summary. Ms. Christensen appeared to agree that additional information may not be needed.

DNRC suggested using the BOR water service contracts for water from Canyon Ferry reservoir as a model for Hungry Horse. Canyon Ferry water users, including the City of Helena and irrigation districts, have short-term water service contracts with BOR for municipal and irrigation uses. The contracts provide for release of water stored in Canyon Ferry to allow additional water right uses when water would be otherwise unavailable because of downstream hydropower water rights. Water users on both the mainstem of the Missouri River and on tributaries both up and downstream of the Missouri have obtained these water service contracts from the BOR. The relevant comparisons between the Hungry Horse and Canyon Ferry situations are the contracts with water users along the mainstem and tributaries downstream of Canyon Ferry. However, contracts with water users on the upstream tributaries illustrate the flexibility afforded by BOR projects in offsetting impacts to senior downstream hydropower water rights.

Ms. Christensen agreed to look into the Canyon Ferry contracts and their applicability for the Hungry Horse situation.

BOR appears to agree that the 100,000 acre-feet that DNRC is requesting from Hungry Horse would have a diminutive effect on the operation of Hungry Horse and downstream in the Columbia basin. Such a finding by BOR would be advantageous to the state because it might mean that an environmental impact statement would be unnecessary.

Mr. Bryggman also noted that according to BOR's contract manual and the contracting process described by Ms. Christensen, the cost allocation study would not necessarily set the price that BOR would charge the state for the Hungry Horse water. The price would be set by negotiations between the BOR and the state after the cost allocation study is completed and approved by the Congress.

To date, DNRC has provided BOR with \$50,000 of the \$260,000 appropriated by the 2007 legislature, and the BOR has expended \$20,000. Mr. Vinton has requested another \$50,000. Under the terms of the memorandum of understanding between the BOR and the state, DNRC can send all of the remainder of the \$260,000 to the BOR prior to end of FY 2009, and BOR will return any of these funds not expended on the cost allocation study.

Question - I agree that 100,000 acre-feet would not make a significant difference to flows from Hungry Horse for power generation, but what about for downstream salmon?

Answer by Tim Bryggman - I am not sure about salmon effects.

Answer by Gerald Mueller - The BOR answers to this question reported in the December 8, 2008 meeting summary, which was reviewed by the BOR, appear to be contradictory.

Comment by Mike McLane - DFWP is concerned about the possible combined effect of the 100,000 acre feet contract with the state and the amount of Hungry Horse water that might be provided through the compact with the Confederated Salish and Kootenai Tribes. The combined amount may be 300,000 acre-feet.

Question - Who would pay the BOR for the Hungry Horse water?

Answer by Gerald Mueller - The idea suggested by the Task Force is that the state would pay the BOR and would then recover its purchase costs by leasing the water to basin water users. The users would be willing to pay for a lease because it would provide “wet” water. The alternative to a lease would be a new water right permit or the purchase of an existing water right. A new permit would amount only to a place at the end of the line for allocation of the available water supply.

Comment - If one assumes that adverse affect is defined by a measurable impact, obtaining mitigation water to keep Avista whole would be easy.

2009 Water Legislation - John Tubbs passed out a list of the bills that he is tracking. See Appendix 1. He noted that HB 40, which would change the water right permitting process, is his top priority. A brief summary of the bills in which the Task Force has an interest follows.

- HB 6 - This bill was introduced by request of the DNRC and the Office of Budget and Program Planning. It would appropriate money to DNRC for grants under the Renewable Resource Grant and Loan Program. It would provide \$100,000 to the Bitterroot Irrigation District for first phase of its siphon project.
- HB 25 - This is the bill that creates the exemption from water right permits for the Montana Department of Transportation for its wetland mitigation work. Agriculture interests opposed this bill in the House Natural Resources Committee hearing on January 9, 2009.
- HB 39 - This is a Water Policy Interim Committee (WPIC) bill that would authorize district court judges to appoint water masters to address enforcement if the appointment is approved by the chief water judge, allow the Attorney General to bring suit to enjoin the waste, unlawful use, interference, or violation without being requested to do so by DNRC, and eliminate the requirement that DNRC attempt to obtain voluntary compliance before petitioning the district court to enforce water rights. The hearing on this bill is scheduled for January 14, 2009 before the House Natural Resources Committee. *Note this bill passed the House and has been transmitted to the Senate.*
- HB 40 - This is a WPIC bill that would change the water permitting process in the manner requested by DNRC. Key changes include requiring DNRC to issue a preliminary determination on a water right permit or a change in appropriation right and changing hearings from contested case to show cause if the applicant objects to DNRC’s preliminary denial or if objectors object to a preliminary approval. This bill is Mr. Tubbs’ top legislative priority. The hearing on this bill is scheduled for January 21, 2009 before the House Natural Resources Committee.
- HB 41 - This is a WPIC bill that would require that a discharge permit must be obtained, if necessary, for an aquifer recharge plan or a mitigation plan in a closed basin. The bill also is scheduled for hearing before the House Natural Resources Committee January 14, 2009.
- HB 52 - This is another WPIC bill that would provide \$4.2 million to the Montana Bureau of Mines and Geology for conducting ground water studies in seven subbasins experiencing rapid growth. The areas studied would be prioritized by a ground water assessment steering

committee consisting of representatives of federal, state, and local government agencies and agricultural water users, industrial water users, a conservation or ecological protection organization, and the development community. The House Appropriations Committee will hear this bill on January 12, 2009.

- HB 201 - This bill was requested by Senator Jackson and will be sponsored by Representative Taylor. It would fund the Task Force at \$37,500 per year for the next biennium. This bill will be a backup in case funds are not included in the DNRC budget by the Appropriation Committee. A hearing has not yet been scheduled.
- SB 4 - This bill was requested by the Environmental Quality Council (EQC) and would create a committee of the EQC to address water policy issues. This bill was tabled by the Senate Natural Resources Committee in favor of SB 22.
- SB 17 - This bill is a WPIC that would, among other things, require a public water and sewer system for subdivisions with 30 or more lots with an average lot size of less than 3 acres. The hearing on this bill is scheduled on January 21, 2009 before the Senate Local Government Committee.
- SB 22 - This bill was introduced at the request of WPIC and would create a permanent, independent legislative committee to address water policy issues. The bill has passed the Senate Natural Resources Committee.
- SB 39 - This bill was introduced at the request of the Confederated Salish and Kootenai Tribes. It would extend the life of the Reserved Water Rights Compact Commission by four years. It was passed by the Senate and transmitted to the House.
- SB93 - This bill was introduced at the request of DNRC. For ground water appropriation in closed basin, it would require mitigation for net depletion to surface water rather than for an adverse affect on an existing water right.
- SB94 - This bill was introduced at the request of DNRC and is a companion bill to SB93. It would conform the procedural requirements for ground water appropriation in closed basin to the policy change of requiring mitigation for net depletions rather than adverse affects.
- SB120 - This bill was introduced at the request of DNRC. It would revise controlled ground water laws by changing the trigger for the study of new controlled ground water area to come from a state or local public health agency or a municipality, county, conservation district, or local water quality district. It would also authorize DNRC to form a controlled ground water area by rulemaking. The hearing on this bill is scheduled for January 28, 2009 before the Senate Natural Resources Committee.
- SB149 - This bill was also introduced at the request of DNRC. It would allow a municipality or a county water and sewer district to change the place of use of a water appropriation right without prior approval to conform to its municipal water service area under certain conditions, including no expansion of the municipal water right.
- LC0184 - Senator Jackson will introduce this bill to authorize the state to control zebra mussels and other invasive species. The bill will provide for an awareness and education program about invasive species, authorize the state to stop people pulling boats at fishing sites to check for invasive species, authorize the state to designate a management area if invasive species are discovered and to develop a plan to eradicate or control it, and authorize the governor to designate an emergency in response to the discovery of an invasive species. The bill as it is being drafted would not create an invasive species council.

Question - Would the DNRC support allowing private water companies such as Mountain Water Company to be included in SB 149?

Answer by John Tubbs - Yes.

Task Force Action - Those members of the Task Force present at this meeting agreed to support the Bitterroot Irrigation Siphon appropriation in HB 6, HB 40, HB 52, and SB 22. Holly Franz or Brianna Randall will speak on behalf of the Task Force at the hearings on HB 40, HB 52, and SB 22. Harvey Hackett will speak on behalf of the Task Force at the hearing on HB 6.

Water Supply Infrastructure

Gerald Mueller passed out a copy of the letter he had drafted to Senator Baucus from the Task Force recommending that he support including water related infrastructure projects in the federal economic stimulus legislation. See Appendix 1. The letter references the almost two hundred “shovel ready” projects addressing dams, irrigation works, and water supply and sewage system projects identified by the DNRC for Governor Schweitzer.

Question - Would the letter be sent to Senator Baucus only or to the three members of the Montana Congressional delegation?

Answer - It would be sent to all three.

Task Force Action - Those members of the Task Force present at this meeting agreed to send the letter to the three members of the Montana Congressional delegation.

Comment - You might talk with someone in Senator Baucus’ office to see if anything else should be included in it.

Response - I will do so.

Public Comment

There was no additional public comment.

Next Meeting

The next meeting is scheduled for 9:30 a.m. on Monday, February 2, 2009 at a location in Helena to be announced. The agenda will include the Hungry Horse water contract, 2009 water legislation, the 2009 conferences, and Task Force funding.

Appendix 1
Clark Fork River Basin Task Force
C/O Gerald Mueller
440 Evans
Missoula, MT 59801
(406)543-0026

January 12, 2009

Senator Max Baucus
Missoula Office
1821 South Avenue West
Suite 203
Missoula, MT 59801

Dear Senator Baucus:

I write to you on behalf and at the direction of the Clark Fork River Basin Task Force (Task Force) to urge you to support including water related infrastructure projects in the federal economic stimulus legislation. The need for “shovel ready” transportation and energy projects is often discussed in the press. Montana’s economy, environment and quality of life is critically dependent on water. Water projects that store, treat, and distribute water to Montana’s rural and urban areas are vital. Many of these projects were constructed 50 to 100 years ago and are at or past their design lives. Many require repairs that their operators or owners cannot afford.

At Governor Schweitzer’s request, state agencies have identified projects that can be initiated within 180 days. All would create jobs. The Montana Department of Natural Resources and Conservation (DNRC) identified almost two hundred projects addressing dams, irrigation works, and water supply and sewage systems. Enclosed is the list of DNRC projects including estimates of project costs and the number of jobs that would be created.

The Task Force is a collaborative basin water management planning body established pursuant to a state statute, 85-2-350 MCA. Following its statutory mandate, the Task Force developed a water management plan for the Clark Fork River basin that (1) identified options to protect the security of water rights; (2) provided for the orderly development of water; and (3) provided for the conservation of water in the future. By this same statute, Task Force members must be representative of the basin in terms of both geography and water interests.

The Task Force is concerned about the status of the basin’s water-related infrastructure. The federal stimulus legislation provides an opportunity to make needed repairs and updates to this infrastructure. We respectfully urge you to include water projects in the stimulus package.

Sincerely,

Gerald Mueller
Task Force Facilitator